

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-01558
Petitioner: Innovative Properties
Respondent: Department of Local Government Finance
Parcel #: 001-41-49-0215-0026
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$44,500 and notified the Petitioner on December 29, 2003.
2. The Petitioner filed a Form 139L on August 6, 2004.
3. The Board issued notices of hearings to the parties dated June 20, 2005.
4. Special Master Jennifer Bippus held the hearing on July 20, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 7040 W. 22nd Avenue, Gary, in Calumet Township.
6. The subject property is .488 acres of vacant land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of subject property to be \$44,500 for the land. The subject property has no improvements.
9. The Petitioner requested an assessment of \$5,000.¹

¹ The amount of \$10,900 is requested by the Petitioner on the Form 139L petition; however at the hearing the Petitioner revised the requested assessed value to be \$5,000.

10. George Holmes, president of the Petitioner, and Terry Knee, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of an error in assessment:
 - a) The Petitioner contends that the subject property's assessment is overstated and should be no more than \$5,000 reflecting its highest market value. *Holmes testimony*. The Petitioner testified that the subject parcel is a vacant lot and can only be used for residential purposes according to the City of Gary Department of Planning, Zoning Division. *Holmes testimony; Petitioner Exhibit 4*.
 - b) The Petitioner also argued that a recent market analysis of the property performed July 15, 2005, valued the subject property at \$5,000. *Petitioner Exhibit 5*. According to the Petitioner, the analysis used recent listings of property for sale and properties sold in the area. *Holmes testimony; Petitioner Exhibits 5-7*.
 - c) The Petitioner argued that the Respondent needs to substantiate the revised land value the Respondent determined. *Holmes testimony; Respondent Exhibit 5*. The Petitioner asserts that recent MLS should be used to value the subject property. *Holmes testimony*.
 - d) Finally, the Petitioner testified that the subject property was purchased in June 2001, for \$600 at a public auction. *Id.*
12. Summary of Respondent's contentions in support of assessment:
 - a) The Respondent contends that the market analysis presented by the Petitioner and the recent sales used in the analysis, did not relate to the January 1, 1999, assessment date (valuation date) set forth by the Guidelines. *Knee testimony; Petitioner Exhibit 5*.
 - b) The Respondent further contends that the purchase of the subject property in 2001, was a tax sale and thus not an arms length transaction and it too did not relate to the January 1, 1999, assessment date. *Id.; Petitioner Exhibit 3*.
 - c) The Respondent testified that the subject property is currently classified as commercial land (S3 – usable undeveloped) which is incorrect. *Knee testimony; Respondent Exhibit 1*. The Respondent asserts that the subject property should be assessed as residential land in a manner similar to other residential properties in the area on a front foot basis. *Knee testimony*. The Respondent added that the subject property is unimproved and like similar unimproved property should have an influence factor of 20% applied. *Id.; Respondent Exhibits 4 and 5*.
 - d) The Respondent submitted a revised property record card (PRC) reflecting residential front foot pricing for the subject parcel. *Respondent Exhibit 5*. The assessed value

for the subject property, according to the Respondent, should be \$10,900. *Knee testimony; Respondent Exhibit 5.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled Lake Co. #1630.
- c) Exhibits:

- Petitioner Exhibit 1: Copy of Form 139L
- Petitioner Exhibit 2: Statement of Petitioner's arguments
- Petitioner Exhibit 3: Copy of Commissioner's Quit Claim Deed
- Petitioner Exhibit 4: Copy of letter from Gary Zoning Director
- Petitioner Exhibit 5: Copy of broker's market analysis
- Petitioner Exhibit 6: Copy of vacant land for sale
- Petitioner Exhibit 7: Copy of vacant land sold
- Petitioner Exhibit 8: Subject property and adjoining property assessments

- Respondent Exhibit 1: Subject PRC
- Respondent Exhibit 2: Copy of Incremental and Decremental Land Summary
- Respondent Exhibit 3: Copy of Plat Map/Aerial/Street
- Respondent Exhibit 4: Adjacent PRCs
- Respondent Exhibit 5: Subject property's revised PRC

- Board Exhibit A: Form 139L Petition
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit c: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the DLGF has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant

to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).

- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*, *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Respondent, however, agreed to a reduction in value. The Board reached this decision for the following reasons:
- a) The Petitioner contends that the subject property is over-valued. In support of this claim, the Petitioner alleged that a market analysis establishes the value of the subject property to be \$5,000. Further, according to the Petitioner, the Petitioner bought the property in 2001 for only \$600 at a tax auction. Finally, the Petitioner presented a letter from the City of Gary Department of Planning, Zoning Division supporting the Petitioner’s argument that the property should be assessed as residential rather than commercial.

Market Analysis

- b) The Petitioner argued that the land is over-valued. *Holmes testimony*. According to the Petitioner, a Market Analysis dated July 15, 2005, for the subject property showed the property to be worth no more than \$5,000. *Id.*; *Petitioner Exhibits 3 and 5*. The Market Analysis submitted by the Petitioner is comprised of three recent purportedly comparable land listings² and three purportedly comparable land sales. *Petitioner Exhibit 5*.
- c) Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 6-1.1-31-6(c). “True tax value” is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*

² Though the Petitioner submitted ten listings of properties for sale, only three of the listings were included in the Market Analysis. The other seven properties were not discussed by the Petitioner.

- d) Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- e) Here, the Petitioner submitted a "Broker's Market Analysis and Strategy Report." *Petitioner Exhibit 5.*³ To use the sales comparison approach, the Petitioner must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use. Thus, while a sales comparison of properties sold in 1999 may have assisted the Board in determining the value of the subject properties in 1999, the evidence provided by the Petitioner is insufficient to make this determination. Here the Petitioner provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by the Petitioner were "comparable" properties. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). In addition, the Petitioner failed to show the relevance of sales in 2004 and 2005 to the January 1, 1999, valuation date as required in *Long*.
- f) The Petitioner failed to raise a prima facie case on the basis of his Market Analysis. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Quit Claim Deed

- g) The Petitioner also alleged that the subject property was over-valued based upon the price for which he purchased the property in 2001. According to the Quit Claim Deed submitted by the Petitioner, the subject property was purchased in June 2001, for \$600. *See Petitioner Exhibit 3.* As testified to by the Petitioner, the subject property was purchased at a public tax auction. *Holmes testimony.*

³ The market analysis clearly states that it "is not an appraisal or home inspection." *Id.* There is no evidence that the report used generally accepted appraisal methods to arrive at the opinion of value. The Board is unconvinced that a report designed to determine a "listing" price of a property is probative of the property's value. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

- h) Again, real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 6-1.1-31-6(c). “True tax value” is defined as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” MANUAL at 2. The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an “arm’s-length transaction” at “fair market value.” In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale, by itself, is not probative evidence of market value of a property.

City of Gary Department of Planning, Zoning Division Letter

- i) Finally, the Petitioner alleged that the assessment of the subject property as commercial property was in error. In support of this contention, the Petitioner submitted a letter from the City of Gary Department of Planning, Zoning Division dated July 18, 2005, which stated that the property located at 7040 West 22nd Avenue, Gary (subject property) was zoned R-2 (residential) and that it could only be used as residential. *Id.*; *Petitioner Exhibit 4*. The Board finds that the Petitioner has raised a prima facie case that the property was improperly assessed as commercial.
- j) Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner’s evidence. *See American United Life Ins. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent testified that the DLGF agreed with the Petitioner that the subject land was incorrectly valued as commercial land and should be valued as residential land. *Knee testimony*. The Respondent submitted a revised PRC which used surrounding residential values to value the subject property as residential. *Id.*; *See Respondent Exhibit 5*. After changing the pricing of the subject land from commercial to residential and applying a negative influence factor, the assessed value of the subject property should be \$10,900 according to the Respondent. *Knee testimony*; *Respondent Exhibit 5*.
- k) The Petitioner raised a prima facie case that the property is incorrectly assessed as commercial. The Respondent agreed. The Board therefore finds in favor of the Petitioner and holds that the property is residential property and should be assessed accordingly. Further, the Respondent testified that the value of the subject property assessed as a residential property is \$10,900. The Board holds that the property

should be assessed as residential for an amount no higher than the \$10,900 that the Respondent alleged the property should be valued.

Conclusion

- 16. The Petitioner raised a prima facie case that the subject property should be assessed as residential property. The Respondent agreed and testified that the value of the subject property should be \$10,900. The Board finds in favor of the Petitioner and holds that the subject property should be assessed as residential property. Further, the Board holds that the value of the subject property should be assessed no higher than \$10,900. The Petitioner failed to provide sufficient evidence to establish a prima facie case on all other contentions.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.